

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11908 of Henry C. Lingua to Appropriate Water from Mill Creek, tributary to Middle Fork of Eel River in Mendocino County for Irrigation and Domestic Purposes.

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Decision A. 11908 D. 605

Decided April 14th, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES
AT THE SITE OF THE PROPOSED APPROPRIATION ON May 17, 1948:

Henry C. Lingua

Applicant

Grath I. Murphy)
E. G. Sack)
Scott Feland)

For the Protestant

A. S. Wheeler, Assistant
Hydraulic Engineer,
Department of Public Works

For the State Engineer

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OPINION

General Description of the Project

The application was filed with the Division of Water Resources by Henry C. Lingua on May 28, 1947. It contemplates a diversion of 0.75 cubic foot per second from June 1 to November 1 of each season for irrigation and domestic purposes. The point of diversion is described as lying within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T 22 N, R 12 W, M.D.B. & M. The land which it is proposed to irrigate is a 50 acre planting of alfalfa, of which 30 acres are said to lie within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 20 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5,

T 22 N, R 12 W, M.D.B. & M. The domestic use contemplated includes stockwatering and the irrigation of a half acre garden and family orchard. The irrigation season is said to begin about June 1 and end about October 1. Diversion is to be effected by pumping by means of a plant of 700 gallons per minute capacity.

Protests

The California State Fish and Game Commission protests that the proposed appropriation will result in injury, viz., in the destruction of steelhead and salmon, property of the State of California. It asserts that the amount of water applied for at times exceeds the total flow of the stream filed upon, the minimum flow on July 10, 1938 as reported by District Biologist Leo Shapovalov and E. H. Vestal having been 200 gallons per minute. The protestant bases its claim of right to use of the water in question upon Section 525 of the Fish and Game Code and asserts that steelhead and salmon are naturally spawned and present in Mill Creek. The terms under which the protest may be disregarded and dismissed were said in the protest to be the inclusion in the permit of a clause providing for the release at all times, for the protection of fish life, of 100 gallons per minute, or the natural flow at the point in question, whichever is less. These terms were modified by letter of September 24, 1947 so as to require the release mentioned until August 1 of each year only; and finally by letter of May 19, 1948 to the terms merely that pumping or diversion be limited to not more than 10 hours out of any twenty-four hour period.

Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation on May 17, 1948, by an engineer of the Division. The applicant and represen-

tatives of the protestant were present during the investigation.

Records Relied Upon

Application 11908 and all data and information on file therewith.

Discussion

Records of the discharge of Mill Creek are lacking except for occasional observations. At the time of the field investigation on May 17, 1948 the discharge at the applicant's property is reported to have been about 10.0 cubic feet per second. At the same time general opinion was to the effect that no surface flow normally occurs at that locality between July 15 and September 1. On July 10, 1938, the discharge about 0.5 mile upstream is said to have measured 200 gallons per minute and the surface flow at the applicant's place to have been zero. On September 24, 1947, according to the protestant there was no surface flow at the proposed point of diversion but there were scattered pools and a slight flow in some nearby sections.

At the commencement of the investigation the applicant stated that he estimated 15 ten hour days of pumping would complete one irrigation; that he would irrigate but once each month; that he proposed to pump from an excavated sump and to place no obstruction in the stream; that if obliged to obstruct the stream he would provide facilities for continued fish movement; that he would notify the local fish and game warden in advance as to proposed pumping in order to facilitate fish salvaging. The protestant's representatives then voiced the opinion that depletion or interruption of flow for but 10 hours per day would not seriously injure fish which could survive in pools for short periods.

Subsequently the protestant wrote to the applicant on May 19, 1948

to the effect that if he will agree (by letter) to provide suitable pipe or device for fish movement and to notify a designated warden in advance of each series of pumping periods, the protestant will authorize the dismissal of its protest provided such permit as may be issued contains a clause restricting pumping to 10 hours per 24 hour period. The applicant by letter dated May 21, 1948 indicated his acceptance of these revised terms and the protest was accordingly dismissed.

The protest by California State Fish and Game Commission having been dismissed and no other protests standing against the application, no further bar is seen to its approval. In view of the circumstances Application 11908 should be approved subject to the usual terms and conditions and also subject to a special term and condition that the permittee shall, for the protection of fish life, limit pumping or other diversion to not more than 10 hours out of any 24 hour period.

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ORDER

Application 11908 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

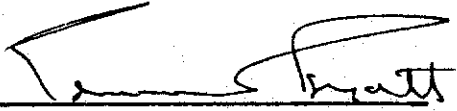
IT IS HEREBY ORDERED that Application 11908 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term and condition, to-wit:

Permittee shall limit diversions under this permit to not

more than ten hours out of any twenty-four hour period
to maintain fish life.

WITNESS my hand and the seal of the Department of Public Works of
the State of California this 14th day of April, 1949.




Edward Hyatt, State Engineer